

	आयुक्त (अपील्स) का कार्यालय, केन्द्रीय वस्तु एवं सेवा कर और उत्पाद शुल्क:- O/O THE COMMISSIONER (APPEALS), CENTRAL GST & EXCISE.	
	द्वितीय तल, जी एस टी भवन / 2 <sup>nd</sup> Floor, GST Bhavan, रेस कोर्स रिंग रोड, / Race Course Ring Road, राजकोट / Rajkot - 360 001 Tele Fax No. 0281 - 2477952/2441142 Email: cexappealsrajkot@gmail.com	

रजिस्टर्ड डाक ए. वी. द्वारा :-

क	अपील / फाइल संख्या / Appeal / File No. V2/118/BVR/2017	मूल आदेश सं / O.O. No. 88/AC/Stax/Div/2016-17	दिनांक / Date 10-02-2017
ख	अपील आदेश संख्या (Order-In-Appeal No.):		

**BHV-EXCUS-000-APP-252-2017-18**

आदेश का दिनांक / Date of Order:	28.03.2018	जारी करने की तारीख / Date of issue:	02.04.2018
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Passed by Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar.

अधिसूचना संख्या 26/2017-के.उ.शु. (एन.टी.) दिनांक 10.10.2017 के साथ पठे बोटे ऑफिस आदेश सं. 88/2016-ग.स.टी. दिनांक 10.11.2016 के अनुसरण में, श्री सुनील कुमार सिंह, आयुक्त, केन्द्रीय वस्तु एवं सेवा कर एवं केन्द्रीय उत्पाद शुल्क, गांधीनगर, को वित्त अधिनियम 1994 की धारा 86, केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 24 के अंतर्गत दर्जे की गई अपील के सन्दर्भ में आदेश पारित करने के उद्देश्य से अधोलिखित प्राधिकारी के रूप में नियुक्त किया गया है।

In pursuance to Board's Notification No. 26/2017-C.Ex.(NT) dated 17.10.2017 read with Board's Order No. 05/2017-ST dated 16.11.2017, Shri Sunil Kumar Singh, Commissioner, CGST & Central Excise, Gandhinagar, has been appointed as Appellate Authority for the purpose of passing orders in respect of appeals filed under Section 35 of Central Excise Act, 1944 and Section 85 of the Finance Act, 1994.

- ग अपील आयुक्त/ आयुक्त (अपील) / उप-आयुक्त/ सहायक आयुक्त, केन्द्रीय उत्पाद शुल्क/ सेवाकर, राजकोट / जामनगर / गांधीधाम/ भावनगर / द्वारा उपरलिखित जारी मूल आदेश से संचित /  
Arising out of above mentioned O/O issued by Additional/Joint/Deputy/Assistant Commissioner, Central Excise / Service Tax, Rajkot / Jamnagar / Gandhidham/ Bhavnagar ;
- घ अपीलकर्ता & प्रतिकर्ता का नाम एवं पता /Name & Address of the Appellants & Respondent :-  
M/s Saub Arya Steel P. Ltd., "Arya House", Khargate Street, Khargate, Bhavnagar 354 001.

इस आदेश(अपील) से व्यतिरिक्त कोई व्यक्ति निम्नलिखित तरीके से उपरोक्त प्राधिकारी / प्राधिकरण के समक्ष अपील कर सकता है।  
Any person aggrieved by this Order-in-Appeal may file an appeal to the appropriate authority in the following manner.

- (A) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के प्रति अपील, केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35B के अंतर्गत एवं वित्त अधिनियम, 1994 की धारा 86 के अंतर्गत निम्नलिखित जगह की जा सकती है।  
Appeal to Customs, Excise & Service Tax Appellate Tribunal under Section 35B of CEA, 1944 / Under Section 86 of the Finance Act, 1994 an appeal lies to
- (i) उत्तरांचल, मध्य प्रदेश, उत्तर प्रदेश, बिहार, छत्तीसगढ़, झारखण्ड, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण के विशेष पीठ, वेस्ट ब्लॉक नं 2, आर के पुरम, नई दिल्ली, को की जानी चाहिए।  
The special bench of Customs, Excise & Service Tax Appellate Tribunal of West Block No. 2, R.K. Puram, New Delhi in all matters relating to classification and valuation.
- (ii) उपरोक्त परिच्छेद (i) में वर्णित गए अपील के अलावा शेष सभी अपीलें सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय न्यायाधिकरण (मिस्टेट) की पश्चिम क्षेत्रीय पीठिका, द्वितीय तल, बहमाली भवन असावी अहमदाबाद को की जानी चाहिए।

To the West regional bench of Customs, Excise & Service Tax Appellate Tribunal (CESTAT) at, 2<sup>nd</sup> Floor, Bahamani Bhawan, Asarwa Ahmedabad-380015 in case of appeals other than as mentioned in para- (i) above

- (iii) अपीलीय न्यायाधिकरण के समस्त अपील प्रस्तुत करने के लिए केन्द्रीय उत्पाद शुल्क (अपील) नियमावली, 2001, के नियम 6 के अंतर्गत निर्धारित किए गये फॉर्म EA-3 को चार प्रतियों में दर्ज किया जाना चाहिए। इनमें से कम से कम एक प्रति के साथ, जहां उत्पाद शुल्क की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal to the Appellate Tribunal shall be filed in quadruplicate in form EA-3 / as prescribed under Rule 6 of Central Excise (Appeal) Rules, 2001 and shall be accompanied against one which at least should be accompanied by a fee of Rs. 1,000/- Rs.5000/-, Rs.10,000/- where amount of duty demand/interest/penalty/retail is upto 5 Lac., 5 Lac to 50 Lac and above 50 Lac respectively in the form of crossed bank draft in favour of Asst. Registrar of branch of any nominated public sector bank of the place where the bench of any nominated public sector bank of the place where the bench of the Tribunal is situated. Application made for grant of stay shall be accompanied by a fee of Rs. 500/-

- (B) अपीलीय न्यायाधिकरण के समस्त अपील, वित्त अधिनियम, 1994 की धारा 86(1) के अंतर्गत सेवाकर नियमावली, 1994, के नियम 9(1) के तहत निर्धारित फॉर्म S.T.-5 में चार प्रतियों में की जा सकेगी एवं उसके साथ जिस आदेश के विरुद्ध अपील की गयी हो, उसकी प्रति साथ में संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और इनमें से कम से कम एक प्रति के साथ, जहां सेवाकर की मांग, ब्याज की मांग और लगाया गया जुर्माना, रुपए 5 लाख या उससे कम, 5 लाख रुपए या 50 लाख रुपए तक अथवा 50 लाख रुपए से अधिक है तो क्रमशः 1,000/- रुपये, 5,000/- रुपये अथवा 10,000/- रुपये का निर्धारित जमा शुल्क की प्रति संलग्न करें। निर्धारित शुल्क का भुगतान, संबंधित अपीलीय न्यायाधिकरण की शाखा के सहायक रजिस्ट्रार के नाम से किसी भी सार्वजनिक क्षेत्र के बैंक द्वारा जारी रेखांकित बैंक ड्राफ्ट द्वारा किया जाना चाहिए। संबंधित ड्राफ्ट का भुगतान, बैंक की उस शाखा में होना चाहिए जहां संबंधित अपीलीय न्यायाधिकरण की शाखा स्थित है। स्थगन आदेश (स्टे ऑर्डर) के लिए आवेदन-पत्र के साथ 500/- रुपए का निर्धारित शुल्क जमा करना होगा।

The appeal under sub section (1) of Section 86 of the Finance Act, 1994, to the Appellate Tribunal shall be filed in quadruplicate in Form S.T.5 as prescribed under Rule 9(1) of the Service Tax Rules, 1994, and shall be accompanied by a copy of the order appealed against (one of which shall be certified copy) and should be accompanied by a fee of Rs. 1000/- where the amount of service tax & interest demanded & penalty levied of Rs. 5 Lakhs or less, Rs.5000/- where the amount of service tax & interest demanded & penalty levied is more than five lakhs but not exceeding Rs. Fifty Lakhs, Rs.10,000/- where the amount of service tax & interest demanded & penalty levied is more than fifty Lakhs rupees, in the form of crossed bank draft in favour of the Assistant Registrar of the bench of nominated Public Sector Bank of the place where the bench of Tribunal is situated. / Application made for grant of stay shall be accompanied by a fee of Rs.500/-.

- (i) वित्त अधिनियम, 1994 की धारा 86 की उप-धाराओं (2) एवं (2A) के अंतर्गत दर्ज की गयी अपील, सेवाकर नियमावली, 1994, के नियम 9(2) एवं 9(2A) के तहत निर्धारित फॉर्म S.T.-7 में की जा सकेगी एवं उसके साथ आयुक्त, केन्द्रीय उत्पाद शुल्क अथवा आयुक्त (अपील), केन्द्रीय उत्पाद शुल्क द्वारा परित आदेश की प्रतियों संलग्न करें (उनमें से एक प्रति प्रमाणित होनी चाहिए) और आयुक्त द्वारा सहायक आयुक्त अथवा उपायुक्त, केन्द्रीय उत्पाद शुल्क/सेवाकर, को अपीलीय न्यायाधिकरण को आवेदन दर्ज करने का निर्देश देने वाले आदेश की प्रति भी साथ में संलग्न करनी होगी।

The appeal under sub section (2) and (2A) of the section 86 the Finance Act 1994, shall be filed in For ST.7 as prescribed under Rule 9 (2) & 9(2A) of the Service Tax Rules, 1994 and shall be accompanied by a copy of order of Commissioner Central Excise or Commissioner, Central Excise (Appeals) (one of which shall be a certified copy) and copy of the order passed by the Commissioner authorizing the Assistant Commissioner or Deputy Commissioner of Central Excise/ Service Tax to file the appeal before the Appellate Tribunal.

- (ii) सीमा शुल्क, केन्द्रीय उत्पाद शुल्क एवं सेवाकर अपीलीय प्राधिकरण (सेस्टैट) के प्रति अपीलों के मामले में केन्द्रीय उत्पाद शुल्क अधिनियम 1994 की धारा 35एक के अंतर्गत, जो की वित्तीय अधिनियम, 1994 की धारा 83 के अंतर्गत सेवाकर को भी लागू की गई है, इस आदेश के प्रति अपीलीय प्राधिकरण में अपील करते समय उत्पाद शुल्क/सेवा कर मांग के 10 प्रतिशत (10%), जब मांग एवं जुर्माना विवादित है, या जुर्माना, जब केवल जुर्माना विवादित है, का भुगतान किया जाए, बशर्त कि इस धारा के अंतर्गत जमा कि जाने वाली अपेक्षित देय राशि दस करोड़ रुपए से अधिक न हो।

केन्द्रीय उत्पाद शुल्क एवं सेवाकर के अंतर्गत 'मांग किए गए शुल्क' में निम्न शामिल हैं

- धारा 11 डी के अंतर्गत रकम
- सेनवेट जमा की ली गई गलत राशि
- सेनवेट जमा नियमावली के नियम 6 के अंतर्गत देय रकम

- बशर्त यह कि इस धारा के प्रावधान वित्तीय (सं. 2) अधिनियम 2014 के आरम्भ से पूर्व किसी अपीलीय प्राधिकारी के समक्ष विचारणीय स्थगन अर्जी एवं अपील को लागू नहीं होगी।

For an appeal to be filed before the CESTAT, under Section 15E of the Central Excise Act, 1944 which is also made applicable to Service Tax under Section 83 of the Finance Act, 1994, an appeal against this order shall be before the Tribunal on payment of 10% of the duty demanded where duty or duty and penalty are in dispute, or penalty where penalty alone is in dispute, provided the amount of pre-deposit payable would be subject to a ceiling of Rs. 10 Crores.

Under Central Excise and Service Tax, "Duty Demanded" shall include:

- amount determined under Section 11 D;
- amount of erroneous Cenvat Credit taken;
- amount payable under Rule 6 of the Cenvat Credit Rules.

- provided further that the provisions of this Section shall not apply to the stay application and appeals pending before any appellate authority prior to the commencement of the Finance (No.2) Act, 2014.

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(C) भारत सरकार को पुनरीक्षण आवेदन :

**Revision application to Government of India:**

इस आदेश की पुनरीक्षण याचिका निम्नलिखित मामलों में, केंद्रीय उत्पाद शुल्क अधिनियम, 1994 की धारा 35EE के प्रथम परंतुक के अंतर्गत अवर सचिव, भारत सरकार, पुनरीक्षण आवेदन इकाई, वित्त मंत्रालय, राजस्व विभाग चौथी मंजिल, जीवन दीप भवन, संसद मार्ग, नई दिल्ली-110001, को किया जाना चाहिए। /

A revision application lies to the Under Secretary, to the Government of India, Revision Application Unit, Ministry of Finance, Department of Revenue, 4th Floor, Jeevan Deep Building, Parliament Street, New Delhi-110001, under Section 35EE of the CEA 1944 in respect of the following case, governed by first proviso to sub-section (1) of Section 35B ibid:

(i) यदि माल के किसी नुकसान के मामले में, जहां नुकसान किसी माल को किसी कारखाने से भंडार गृह के पारगमन के दौरान या किसी अन्य कारखाने या फिर किसी एक भंडार गृह से दूसरे भंडार गृह पारगमन के दौरान, या किसी भंडार गृह में या भंडारण में माल के प्रसंस्करण के दौरान, किसी कारखाने या किसी भंडार गृह में माल के नुकसान के मामले में। /

In case of any loss of goods, where the loss occurs in transit from a factory to a warehouse or to another factory or from one warehouse to another during the course of processing of the goods in a warehouse or in storage whether in a factory or in a warehouse

(ii) भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात कर रहे माल के विनिर्माण में प्रयुक्त कच्चे माल पर भरी गई केंद्रीय उत्पाद शुल्क या ड्यूटी (रिवेंयू) के मामले में, जो भारत के बाहर किसी राष्ट्र या क्षेत्र को निर्यात की गयी है। /

In case of rebate of duty of excise on goods exported to any country or territory outside India of an excisable material used in the manufacture of the goods which are exported to any country or territory outside India.

(iii) यदि उत्पाद शुल्क का भुगतान किए बिना भारत के बाहर, नेपाल या भूटान को माल निर्यात किया गया है। /

In case of goods exported outside India export to Nepal or Bhutan, without payment of duty.

(iv) सुनिश्चित उत्पाद के उत्पादन शुल्क के भुगतान के लिए जो ड्यूटी क्रेडिट इस अधिनियम एवं इसके विभिन्न प्रावधानों के तहत मान्य की गई है और ऐसे आदेश जो अपील (अपील) के द्वारा वित्त अधिनियम (नं. 2), 1998 की धारा 109 के द्वारा नियत की गई तारीख अथवा संन्यासविधि पर या बोट में पारित किए गए हैं। /

Credia of any duty allowed to be utilized towards payment of excise duty on final products under the provisions of this Act or the Rules made there under such order is passed by the Commissioner (Appeals) on or after, the date appointed under Sec. 109 of the Finance (No.2) Act, 1998.

(v) उपरोक्त आवेदन की दो प्रतियां पत्र संख्या EA-8 में, जो की केंद्रीय उत्पादन शुल्क (अपील) नियमावली, 2001, के नियम 9 के अंतर्गत विनिर्दिष्ट है, इस आदेश के संप्रेषण के 3 माह के अंतर्गत की जानी चाहिए। उपरोक्त आवेदन के साथ मूल आदेश व अपील आदेश की दो प्रतियां संलग्न की जानी चाहिए। साथ ही केंद्रीय उत्पाद शुल्क अधिनियम, 1944 की धारा 35-EE के तहत निर्धारित शुल्क की अदायगी के साक्ष्य के तौर पर TR-6 की प्रति संलग्न की जानी चाहिए। /

The above application shall be made in duplicate in Form No. EA-8 as specified under Rule, 9 of Central Excise (Appeals) Rules, 2001 within 3 months from the date on which the order sought to be appealed against is communicated and shall be accompanied by two copies each of the O.D and Order in Appeal. It should also be accompanied by a copy of TR-6 Challan evidencing payment of prescribed fee as prescribed under Section 35-EE of CEA, 1944, under Major Head of Account.

(vi) पुनरीक्षण आवेदन के साथ निम्नलिखित निर्धारित शुल्क की अदायगी की जानी चाहिए। /

जहां संलग्न शुल्क एक लाख रुपये या उससे कम हो तो रुपये 200/- का भुगतान किया जाए और यदि संलग्न शुल्क एक लाख रुपये से ज्यादा हो तो रुपये 1000/- का भुगतान किया जाए। /

The revision application shall be accompanied by a fee of Rs. 200/- where the amount involved is Rupees One Lac or less and Rs. 1000/- where the amount involved is more than Rupees One Lac.

(D) यदि इस आदेश में कई मूल आदेश का समावेश है तो प्रत्येक मूल आदेश के लिए शुल्क का भुगतान, उपरोक्त दर से किया जाना चाहिए। इस तथ्य के होते हुए भी की लिखा पत्रों का से बचने के लिए यद्योस्थिति अपील न्यायाधिकरण को एक अपील या केंद्रीय सरकार को एक आवेदन किया जाता है। / In case, if the order covers various matters of order in Original, fee for each O.I.O. should be paid in the original manner, not withstanding the fact that the one appeal to the Appellate Tribunal or the one application to the Central Govt. As the case may be, is filed to avoid scriptoria work if otherwise the fee of Rs. 100/- for each.

(E) अदालतीय न्यायालय शुल्क अधिनियम, 1975, के अनुसूची-1 के अनुसार मूल आदेश एवं स्थगन आदेश की प्रति या निर्दिष्ट 0.50 रुपये का न्यायालय शुल्क टिकट लगा होना चाहिए। /

One copy of application or O.I.O. as the case may be, and the order of the adjudicating authority shall bear a court fee stamp of Rs. 0.50 as prescribed under Schedule-I in terms of the Court Fees Act, 1975, as amended.

(F) सीमा शुल्क, केंद्रीय उत्पाद शुल्क एवं सेवाकर अपील न्यायाधिकरण (कार्य विधि) नियमावली, 1982 में वर्णित एवं अन्य संबंधित मामलों की सम्बन्धित बाने वाले नियमों की उचित भी ध्यान आकर्षित किया जाता है। /

Appellants are also referred to the rules covering these and other related matters contained in the Customs, Excise and Service Appellate Tribunal (Procedure) Rules, 1982.

(G) उच्च न्यायालय या अपील न्यायाधिकरण के अधिकार क्षेत्र के अंतर्गत अपील करने के संबंध में व्यापक, वास्तुतः और नवीनतम प्रावधानों के लिए, आधिकारिक विभागों के वेबसाइट [www.cbec.gov.in](http://www.cbec.gov.in) को देख सकते हैं। /

For the latest rules, detailed and latest provisions relating to filing of appeal to the higher appellate authorities, the appellant may refer to the Departmental website [www.cbec.gov.in](http://www.cbec.gov.in)

## Order In Appeal

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The subject appeal no. 118/BVR/2017 is filed by M/s Shubh Arya Steel Pvt. Ltd., Plot No. 5, Ship Breaking Yard, Alang-364081 Taluka-Talaja, Dist.: Bhavnagar (hereinafter referred to as 'the appellant') against Order in Original No. 84/AC/STAX/DIV/2016-17 dated 10.02.2017 (hereinafter referred to as 'the impugned order') passed by the Assistant Commissioner, Service Tax Division, Bhavnagar (hereinafter referred to as 'adjudicating authority').

2. The facts of the case in brief are that during the course of audit, on verification of purchase invoices, it was noticed that the appellant had received taxable service under category of GTA and had collected transportation charges from the consignee Services, however, not paid service tax of Rs.4,22,220/- on the same. During the course of audit, it was further found that the appellant had paid amount towards 'Legal Consultancy Service'. It was found that as per Reverse Charge Mechanism, being service recipient, the appellant was required to pay service tax of Rs.70,170/- on 100% of the amount of taxable service. However, it was found that they had not paid service tax of Rs.4,92,390/- (Rs.4,22,220/- for transportation charges + Rs.70,170/- for Legal Consultancy Service) at the material time and had also not obtained service tax registration as required under Rule 4(5A) and Rule 4(1) of Service Tax Rules, 1994. Accordingly, show cause notice was issued to them proposing demand and recovery of central excise duty of Rs.4,92,390/- alongwith interest and penalty.

3. The show cause notice was adjudicated by the adjudicating authority vide impugned order wherein demand of service tax was confirmed alongwith interest and penalty was also imposed under Section 77 (1)(a), Section 77(2) and Section 78 of the Finance Act, 1994.

4. Being aggrieved, the appellant filed the present appeal on the following grounds:

- (i) Provisions of Rule 2(1)(d)(B) of the Service Tax Rules, 1994 cases the liability of a person to pay freight in case of GTA Service. Any dealer of excisable goods, who is registered under C. Ex. Act, 1944 is also a person liable to pay freight. Further, in case of sales through their consignment agent, the goods were sold for delivery at the door step of the consignment agent and in such transaction,

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the valuation of the excisable goods are governed in accordance of Rule 5 of Central Excise Valuation Rules, 2000.

- (iii) It is worth to mentioned that to include fright charges in invoice does not mean that the appellant herein has collected the amount of freight from the buyer. To mention freight amount is merely a requirement of valuation rules. In the back drop, the appellant received only net amount towards sales & excise duty paid thereon and freight and other expenses etc. were born by the consignment agent only. However, the adjudicating authority failed to understand the above factual matrix that appellant has neither recovered the freight nor service tax payable on such freight amount towards transportation of goods from the factory to the place of delivery. Accordingly, requested to allow the appeal.
- (iv) Regarding Legal consultation service, the appellant stated that no liability of payment of service tax arise under the category of Legal Consultancy Services on them as the bills were raised towards filing of application or drafting/ dispatch of reply etc., Mortgage Fees, PF Advice, Trade Mark Application etc. and these activities are not in relation to representational service before any court, tribunal or authority, as provided under sub-clause (ii) of Section 65(105)(zzzzm) of Finance Act, 1994. Therefore, not covered by definition of taxable activity of legal service and the charge of payment of service tax under reverse charge mechanism has been confirmed wrongly/without authority of law and needs to be set aside.
- (v) The appellant strongly opposed the extended period of 5 years as the same has been done for justification for recovery of Service Tax at any cost from them. The impugned order is absolutely lacking and does not support with the vital and paramount ingredient to invoke extended period. There are plethora of judgements wherein it has been stated that the SCN, is a basic foundation of legal dispute and it should be issued with full descriptive and lawful manner. There is no element of fraud, misstatement, collusion and suppression of facts in the entire transaction, invoking larger period in the SCN, hence no penalty under Section 78 is liable.
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- (vi) Regarding penalty under Section 77(1)(a) of the Finance Act, 1994 for not obtaining service tax registration under GTA Service and Legal Consultancy Service, the appellant stated that the objection of such nature was raised for first time as the unit was audited for the first time since introduction of reverse charge mechanism on GTA Service and/or Legal Consultancy Service which was apparently a bonafide, genuine mistake on their part without any ulterior or malafide motive. Hence penalty under section 77(1)(a) of the Act, levied for not obtaining registration under Section 69 of Finance Act, 1994, is futile and void in itself and needs to be dropped.
  - (vii) The date of receipt of impugned Order by the appellant was 15.02.2017 therefore the time limit to file appeal against the impugned Order was 14.04.2017. However, due to issue of corrigendum to OIO dated 30.03.2017 by adjudicating authority which was received by them on 05.04.2017, and hence present appeal is not delayed being the 60 days starts from the date of receipt of corrigendum. However, they filed application to condone delay separately and requested to condone the delay in filing appeal. They also relied on some case laws in this regard.
  - (viii) In view of the above, the appellant stated that they are not required to pay any service tax in respect of above mentioned transactions as confirmed in the impugned order. Further penalty is also not leviable on them u/s 77(1)(a) & 77(2) of the Finance Act, 1994 and accordingly requested for setting aside the same.

5. The appellant also filed Misc. Application for condonation of delay in filing appeal on 28.04.2017 on the grounds that the impugned order was remained kept in the bag of Shri Rajesh Arya, a power of Attorney Holder of their company who had left for office tour outside Gujarat region as per his pre-scheduled tour programme for company's business affairs. Further, Shri Rajesh Arya remained in Mumbai for long period of time due to illness of his father. After intensive search of the said order in the office as well as factory, finally Shir Arya was contacted on phone for this matter and there he could recollect that the same was lying in his bag. Due to this there was delay in filing appeal for 14 to 15 days. They received the impugned order on 15.02.2017, time period of 60 days period expired on 14.04.2017, time period of further 30 days

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for delay condonation expire on 13.05.2017 and they filed appeal on 28.04.2017, hence there was 14 to 15 days delay in filing appeal and accordingly requested for condonation of delay.

6. Personal hearing in the matter was fixed on 30.01.2018. However, the appellant sought adjournment and requested for another date after 10.02.2018. Accordingly, another date for personal hearing was fixed on 22.02.2018. However, none appeared for personal hearing. Thereafter, another personal hearing in the matter was fixed on 16.03.2018 which was attended by Shri A.H. Oza, Excise Consultant of the appellant. He appeared and reiterated the contents of the appeal memorandum.

7. It is observed that the ground put forth by appellant for delay in filing appeal seems to be genuine. Further, it is also observed that said delay in filing appeal is only about 14 days, hence the power confirm under Section 35(1), I hereby condone the delay in filing appeal by the appellant.

8. I find that the appellant has made pre-deposit of Rs.36,929/- which is 7.5% of the total demand of service tax of Rs.4,92,390/- under Section 35F(i) of the Central Excise Act, 1944.

9. I have carefully gone through the impugned order passed by adjudicating authority, the submission made by the appellant in the appeal memorandum as well as by the excise consultant at the time of personal hearing. I find that the limited issue to be decided is -

- (i) Whether appellant was required to pay service tax on (i) 'Transportation charges' collected by them from the consigners during the period from 2011-12 to 2014-15;
- (ii) Whether appellant was required to pay service tax on 'Legal Consultancy Service' under Reversed Charge Mechanism.
- (iii) Whether extended period of 5 years is invocable in present case under Section 73(2) of the Finance Act, 1994.
- (iv) Whether appellant is liable for penal action under Section 77 (1)(a), 77(2) and 78 of the Finance Act, 1994.

9.1 It is observed that under the provisions of Rule 2(1) (d) (B)(V) of the Service Tax Rules, 1994, the liability to pay service tax lies upon the

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person who pays or is liable to pay freight to Goods Transport Agency. For sake of quick reference, the said rule is reproduced below:

**Rule 2 (1) (d) of Service Tax Rules, 2004:**

(d) "person liable for paying service tax", -

(i) in respect of the taxable services notified under sub-section (2) of section 68 of the Act, means,-

(A) in relation to service provided or agreed to be provided by an insurance agent to any person carrying on the insurance business, the recipient of the service.

(AA) in relation to service provided or agreed to be provided by a recovery agent to a banking company or a financial institution or a non-banking financial company, the recipient of the service;

(AAA) in relation to service provided or agreed to be provided by a person involving an aggregator in any manner, the aggregator of the service:

Provided that if the aggregator does not have a physical presence in the taxable territory, any person representing the aggregator for any purpose in the taxable territory shall be liable for paying service tax;

Provided further that if the aggregator does not have a physical presence or does not have a representative for any purpose in the taxable territory, the aggregator shall appoint a person in the taxable territory for the purpose of paying service tax and such person shall be liable for paying service tax.

(B) in relation to service provided or agreed to be provided by a goods transport agency in respect of transportation of goods by road, where the person liable to pay freight is,-

(I) any factory registered under or governed by the Factories Act, 1948 (63 of 1948);

(II) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India;

(III) any co-operative society established by or under any law;

(IV) any dealer of excisable goods, who is registered under the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder;

(V) any body corporate established, by or under any law; or

(VI) any partnership firm whether registered or not under any law including association of persons;

any person who pays or is liable to pay freight either himself or through his agent for the transportation of such goods by road in a goods carriage"

9.1.1 From the definition given under Rule 2(1)(d)(B) of the Service Tax Rules, 1994, the appellant being body corporate are liable to pay service tax on transportation charges as during the period from 2009-10 to 2014-15, they



had collected 'Transportation Charges' of Rs.1,41,65,904/- from the Consignee and paid the same to the Goods Transport Agency. I do not find any force in the contention made by appellant in their appeal memorandum. The adjudicating authority has correctly held that the appellant is required to pay service tax on such transport charges collected by them from consigner.

9.2 Regarding service tax liability on 'Legal Consultancy Service' under Reversed Charge Mechanism, it is observed that the adjudicating authority has held that during the period from 19.07.2012 to March-2015, the appellant had received taxable service under Category 'Legal Consultancy Service' and had paid an amount of Rs.5,67,709/- towards said service. Accordingly, the appellant was liable to pay service tax on this amount under Reverse Charge Mechanism. However, the appellant in their Appeal Memorandum has contended that the bills were raised towards filing of application or drafting/ dispatch of reply etc., Mortgage Fees, PF Advice, Trade Mark Application etc. and these activities are not in relation to representational service before any court, tribunal or authority, as provided under sub-clause (ii) of Section 65(105)(zzzzm) of Finance Act, 1994. Before deciding the issue, for better understanding and for quick reference, the Legal Consultancy Service, as defined under Section 65 (105) (zzzzm) of the Act, is reproduced below :

**65 (105) (zzzzm) of the Finance Act, 1994**

"Taxable service" means any service provided or to be provided to any person, by a business entity, in relation to advice, consultancy or (i) assistance in any branch of law, in any manner: to any business entity, by any (ii) person, in relation to representational services before any court, tribunal or authority; to any business entity, by an (iii) arbitral tribunal, in respect of arbitration. Explanation.—For the purposes of this item, the expressions "arbitration" and "arbitral tribunal" shall have the meanings respectively assigned to them in the Arbitration and Conciliation Act, 1996 (26 of 1996).

9.2.1 From the above definition it is clear that any service provided in relation to advice, consultancy or assistance in any branch of law in any manner to any business entity by any person are taxable services under this category of service. It is observed that the appellant had received services like filing of application or drafting/ dispatch of reply etc., Mortgage Fees, PF Advice, Trade Mark Application etc. and these services are squarely covered under the definition of Legal Consultancy Service. Further, as per Notification No. 30/2012-ST dated 20.06.2012 (w.e.f. 1.7.2012), the appellant, being recipient of such service, were liable to pay service tax under Reverse Charge

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Mechanism on 100% of the amount of taxable services. Hence, I find that the adjudicating authority has correctly held that the appellant, being recipient of such service, were liable to pay service tax against receipt of such service under Reverse Charge Mechanism.

9.3 Regarding applicability of extended period, it is observed that the adjudicating authority while confirming the demand of service tax under Section 73(2) of the Finance Act, 1994 has observed that the appellant had suppressed the material facts from the department as they had never disclosed said facts to the department in any manner and the same were noticed by audit team only during the course of audit of records of the appellant. They never contacted department for clarification with an ulterior motive to evade payment of service tax. On the other hand, the appellant has argued that the impugned order is absolutely lacking and does not support with the vital and paramount ingredient to invoke extended period. There is no element of fraud, misstatement, collusion and suppression of facts in the entire transaction for invoking larger period in the SCN. It is observed that there is no force in the argument put forth by appellant. The adjudicating authority has clearly held that only at the time of audit of the records of the appellant, the department had come to know that the appellant were liable to pay service tax on the transportation charges collected by them from the consigner as well as on the service charges paid by them against the receipt of consultancy service. Hence, I find that the element of suppression of fact in the present case is available to invoke extended period of limitation. In view of the above, I hold that demand is correctly confirmed by adjudicating authority under Section 73(2) of the Finance Act, 1994 by invoking extended period of five years.

9.4 Regarding penalty under Section 77(1)(a) of the Finance Act, 1994, it is observed that the adjudicating authority has correctly held that the appellant was required to get Service Tax Registration, as required under Rule 4(5) of Rule 1994 read with Section 69 of the Finance Act, 1994 for taxable services under Category 'GTA Services & Legal Consultancy Services'. However, the appellant failed to obtain service tax registration under these category of services, hence the adjudicating authority has correctly held that they are liable for penal action under Section 77 (1)(a) of the Finance Act, 1994. Further, the appellant had failed to assess their correct tax liability and not filed correct Service Tax Returns for the period from 2011-12 to 2014-15 as required under Section 70 of the Finance Act, 1994 read with Rule 7 of the Service Tax Rules, 1994, hence the adjudicating authority has correctly imposed penalty under



Section 77(2) of the Finance Act, 1994 on the appellant. Further, I find that the adjudicating authority has correctly imposed penalty under Section 78 of the Finance Act, 1994 holding that the appellant's act of willful suppression of facts with intent to evade payment of service tax rendered them liable for penal action under 78 of the Finance Act, 1994. Accordingly, I upheld all the penalties imposed on appellant.

10. In view of the foregoing discussion and findings, I uphold the impugned order and dismiss the appeal filed by M/s Shubh Arya Steel Pvt. Ltd., Ship Breaking Yard, Alang.

11. The appeal filed by the appellant stand disposed off in above terms.

*Sunil Kumar Singh*  
(Sunil Kumar Singh)  
Commissioner (Appeals)/  
Commissioner,  
CGST & Central Excise,  
Gandhinagar

**By Regd. Post AD**

F. No.: V2/118/BVR/2017

Date: 28.03.2018

To,

M/s. Shubh Arya Steel Pvt. Ltd.,  
Plot No.05, Ship Breaking Yard,  
Alang-364 081, Taluka: Rajula  
Dist: Bhavnagar.

Copy to:

- (1) The Chief Commissioner, CGST & Central Excise, Ahmedabad.
- (2) The Commissioner (Appeals), CGST & Central Excise, Rajkot
- (3) The Commissioner, CGST & Central Excise, Bhavnagar
- (4) The Assistant Commissioner, CGST & C. Ex., \_\_\_\_\_, Bhavnagar
- (5) The Assistant Commissioner (Systems), CGST, Rajkot.
- (6) The Superintendent, CGST & Central Excise Rural Range, Bhavnagar.
- (7) PA to Commissioner of CGST & Central Excise, Gandhinagar.
- (8) Guard file.